

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAUL D. COLLIER)	
Claimant)	
VS.)	
)	
BLACKBURN CONSTRUCTION)	Docket No. 267,170
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal from a preliminary hearing Order entered by Administrative Law Judge John D. Clark on September 7, 2001.

ISSUES

The issue on appeal is whether claimant's accidental injuries arose out of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board (Board) concludes that the Order by the Administrative Law Judge should be affirmed.

The evidence establishes that claimant was working for respondent on March 13, 2001, and was exposed to hydrogen sulfide (H₂S) gas about 30 to 45 minutes before he passed out and fell to the ground. Such a delayed reaction is not uncommon, and occurs in approximately one out of three cases. When claimant lost consciousness, he hit his head and sustained a concussion and skull fracture.

Claimant eventually returned to work and suffered a second accident on May 9, 2001, when he passed out and fell from a forklift. He sustained injuries to his head, left leg, left arm and left shoulder.

The Administrative Law Judge found that claimant did suffer an accidental injury arising out of and in the course of his employment on March 13, 2001, and that the second accident was related to the first. The Board agrees. The evidence establishes that claimant was exposed to the H₂S and that this exposure was the most likely cause of claimant's March 13, 2001 accident. Although the record indicates that claimant had a history of fainting spells, these incidents were few and were remote in time. Furthermore, some of that history is controverted. The Board finds claimant has established that the March 13, 2001 accident arose out of his employment.

The second accident did not result from an exposure to H₂S, but may have been related to the head trauma and skull fracture claimant suffered in the March 2001 accident. But this causal connection was not proven. Nevertheless, contributing to claimant's injuries was the fact that claimant was working on a forklift when he lost consciousness and, therefore, fell approximately five feet to a gravel surface. Because a risk of employment contributed to the injuries, the Board agrees with and affirms the finding that the injuries from the May 9, 2001 accident also arose out of claimant's employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order dated September 7, 2001, entered by Administrative Law Judge John D. Clark, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 2001.

BOARD MEMBER

c: John C. Nodgaard, Attorney for Claimant
Vincent A. Burnett, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Director